



PUBLIC NOTICE

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Washington, D.C. 20554

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CALEA Section 103 Compliance and Section 107(c) Petitions

CC Docket No. 97-213

1. This *Public Notice* provides instructions for carriers that may need to file with the Commission petitions for extension of the deadline for complying with the capability requirements of section 103 of the Communications Assistance for Law Enforcement Act (CALEA), as provided by CALEA section 107(c).¹ As explained below, CALEA-compliant equipment and software has not become available as extensively as industry had expected in 1998. This might make it necessary for some carriers to file petitions to extend the compliance deadline. We are mindful that these filings will represent a burden on carriers, despite their best efforts to comply with the CALEA requirements. To lighten this burden as much as practicable, we have provided below a sample extension petition (Appendix A to this *Public Notice*) and line-by-line instructions for drafting a petition. In addition, we encourage carriers to file joint petitions with other similarly situated carriers, either via trade associations or ad hoc groups, and to participate in the FBI's Flexible Deployment Program.

2. **CALEA Capability Requirements.** CALEA was enacted in 1994 in order to enable law enforcement officials to conduct electronic surveillance effectively and efficiently in the face of rapid advances in telecommunications technology.² Section 103 of CALEA ("assistance capability requirements") requires all telecommunications carriers to ensure that their facilities, equipment and services are capable of providing surveillance upon proper request of a law enforcement agency.³

¹ 47 U.S.C. §§ 1002 and 1006(c), respectively.

² The Commission has adopted several orders implementing CALEA. Additional information is posted on the Commission's Internet site at www.fcc.gov/wtb/csinfo/calea.html.

³ For wireline, cellular and broadband PCS carriers, the Commission has adopted capability standards developed by a committee of the Telecommunications Industry Association, *Interim Standard, Lawfully Authorized Electronic Surveillance, J-STD-025*, Telecommunications Industry Association Standards Committee, Subcommittee TR45.2, adopted December 8, 1997 (J-STD-025). See 47 C.F.R. § 64.2203 for wireline carriers, 47 C.F.R. § 22.1103 for cellular carriers, and 47 C.F.R. § 24.903 for PCS carriers. In response to a joint petition from the DOJ and the FBI, the Commission has ordered an expansion of the J-STD-025 interim standard to include an additional six capabilities, labeled the "punch list" items; these wireline, cellular and broadband PCS carriers have until September

3. **CALEA Capability Deadline.** All telecommunications carriers (carriers)⁴ must comply with CALEA section 103 by June 30, 2000.⁵ If compliance is not reasonably achievable through application of available technology, the Commission may, upon petition by a carrier, grant an extension of up to two years pursuant to CALEA section 107(c), 47 U.S.C. § 1006(c). However, carriers that fail to comply with section 103 by the deadline and fail to obtain an extension from the Commission (non-complying carriers) are subject to enforcement action under section 108 of CALEA.⁶ Carriers have an obligation to comply with section 103 by June 30, 2000, and, only if the need arises, they may file petitions with the Commission for extensions pursuant to the instructions contained herein.⁷

I. General Instructions

4. **Consultation with the FBI.** CALEA section 107(c)(2) requires the Commission to consult with the Attorney General when determining whether an extension of the compliance deadline is warranted.⁸ The Attorney General has delegated responsibility for CALEA to the Director of the Federal Bureau of Investigation (FBI). See 28 C.F.R. § 0.85(o) (1999). As noted in paragraph 6 below, under certain circumstances a carrier's participation in the FBI's Flexible

30, 2001, to provide the six additional punch list capabilities. Communications Assistance for Law Enforcement Act, *Third Report and Order*, 14 FCC Rcd 16794, 16819 and 16849 (1999) (*Third Report and Order*), *appeals docketed, United States Telecommunications Association, et al. v. FCC*, Nos. 99-1442 *et al.* (D.C. Cir. 1999).

⁴ For purposes of CALEA, the Commission has generally defined the term "telecommunications carrier" to mean an entity providing a common carrier service. See Communications Assistance for Law Enforcement Act, *Second Report and Order*, CC Docket No. 97-213, FCC 99-229, ¶¶ 6-29 (rel. Aug. 31, 1999).

⁵ The original statutory deadline for compliance with section 103 was October 25, 1998. 47 U.S.C. § 1001 note. In September 1998 the Commission responded to carrier extension petitions filed pursuant to section 107(c) by extending the compliance deadline until June 30, 2000. It found that "manufacturers should be able to produce equipment that will be generally available for carriers to meet the section 103 capability requirements by December 31, 1999," and that "carriers require an additional period of time to purchase, test and install such equipment and facilities throughout their networks." Petition for the Extension of the Compliance Date under Section 107 of the Communications Assistance for Law Enforcement Act, *Memorandum Opinion and Order*, 13 FCC Rcd 17990, 18017-18 (1998) (*MO&O*).

⁶ 18 U.S.C. § 2522(c)(1) provides for fines of up to \$10,000 for each day of non-compliance. Non-complying carriers may also be subject to additional civil penalties as a result of lawsuits brought by citizens and their families injured by crimes that could have been prevented if the carrier had complied with CALEA section 103.

⁷ We also note that with respect to equipment, facilities, or services deployed after January 1, 1995, a carrier may be deemed in compliance with the assistance capability requirements of section 103 if (a) the Commission, upon petition by a carrier, has determined that compliance is not reasonably achievable for such equipment, facilities or services, in light of the significant difficulty or expense on the carrier or on the users of the carrier's systems, and (b) the Attorney General, upon the carrier's application, fails to agree to pay the carrier for the additional reasonable cost of making compliance with such assistance capability requirements reasonably achievable. CALEA section 109(b), 47 U.S.C. § 1008(b). The Commission must consider eleven factors in reaching its section 109(b) determination, which must be made within a year after the carrier files its petition. *Id.* Given this timeframe and the fact that the filing of a section 109 petition does not automatically stay compliance with section 103 requirements, it is likely that carriers facing the June 30, 2000 deadline run the risk of failing to comply with section 103 unless they either come into compliance or obtain a section 107 extension of time by that date.

⁸ 47 U.S.C. § 1006(c)(2).

Deployment Program will satisfy the statutory requirement for the Commission to consult with the Attorney General.

5. **Requirements for Extensions under Section 107(c).** In order for the Commission to grant a carrier's petition for extension filed pursuant to section 107(c), the Commission must find that "compliance with [section 103's] assistance capability requirements . . . is not reasonably achievable through application of technology available within the compliance period."⁹ Petitioning carriers bear the burden of providing the information necessary for the Commission to make this finding.¹⁰ After receiving information from a petitioning carrier and consulting with the FBI, the Commission may grant or deny the petition. In granting the petition, the Commission can extend the compliance deadline no longer than two years from the date of grant.¹¹

6. **The FBI's Flexible Deployment Program and the FCC's CALEA Section 107(c) Petition Process.** A procedure established by the FBI as part of its deployment program can assist us in processing extension requests filed pursuant to section 107(c). The FBI has provided all telecommunications carriers an opportunity to participate in a Flexible Deployment Program, under which the FBI will review carrier extension proposals in light of the CALEA priorities of law enforcement agencies.¹² For carriers serving geographic areas that do not have a history of demand by law enforcement for electronic surveillance services, the FBI may advise the Commission that extensions of the section 103 compliance deadline for these carriers would not unduly threaten the public safety. As a result, a carrier's participation in the FBI's Flexible Deployment Program enables the Commission to satisfy its statutory obligation to consult with the FBI, and assists the Commission in establishing the length of the petitioning carrier's extension based upon reasonable achievability. Accordingly, we encourage all carriers seeking extensions of the June 30, 2000 deadline to participate in the FBI's Flexible Deployment Program prior to filing a section 107(c) petition with the Commission.

7. The FBI has encouraged carriers choosing to participate in the Flexible Deployment Program to submit proposed deployment schedule information by March 31, 2000,

⁹ *Id.* While the operative phrase "not reasonably achievable through application of technology available within the compliance period" is not defined in the statute or in the Congressional Record with greater specificity, Congress indicated that "reasonable" included consideration for the evolutionary introduction of new technology by telecommunications carriers in the normal course of business. *See, e.g.*, 140 Cong. Rec. H-10770 (daily ed. October 7, 1994) (statement of Rep. Brooks), and H-10780 (daily ed. October 7, 1994) (statement of Rep. Hyde). Accordingly, for each petitioning carrier the Commission will consider in addition to the availability of CALEA-compliant equipment and software, other factors such as the manufacturers' schedule to install and test the CALEA-compliant equipment, and the proximity of CALEA compliance to other network upgrades required by the petitioning carrier.

¹⁰ 5 U.S.C. § 556(d).

¹¹ 47 U.S.C. § 1006(c)(3).

¹² Carriers can download an electronic Flexible Deployment Assistance Guide Template from the FBI's website at <http://www.fbi.gov>. Upon entering the site, proceed to the CALEA link through the available index (<http://www.fbi.gov/programs/calea/calea.htm>). The Flexible Deployment Assistance Guide page is available by selecting the Flexible Deployment Assistance Guide hyperlink. Carriers may also call the FBI's CALEA Flexible Deployment Assistance Guide Help Desk at 800-551-0336.

but has agreed to accept schedules submitted after that date. We expect that participation by carriers in the program will expedite and significantly aid the Commission in its statutory obligation to consult with the FBI on individual carriers' section 107(c) petitions.

8. **CALEA Section 107(c) Petition Categories.** All section 107(c) petitions must contain certain basic information, including the identity of the carrier's switching equipment (by manufacturer; type, make and model; software version or generic currently operating; Common Language Location Identification (CLLI) Code and geographic areas served; and the date or dates that the equipment will become compliant with section 103, to the extent such information is available to the carrier)¹³ and a brief statement or showing as to why the extension is necessary. Upon receipt of a section 107(c) petition, the Commission will place it in one of four categories, depending on what additional information is supplied:

- a) **Category A:** Petitions accompanied by a letter from the FBI's Flexible Deployment Program supporting the carrier's extension request based upon the deployment schedule the petitioning carrier submitted to the FBI (either originally or as amended). Commission staff should be able to process these Category A petitions more expeditiously than others.
- b) **Category B:** Petitions accompanied by a letter from the FBI's Flexible Deployment Program acknowledging receipt of a proposed deployment schedule from the petitioning carrier. Final Commission action on these Category B petitions will be deferred until the FBI has completed its consideration of the proposal. If the FBI approves the schedule, the petition will be reclassified as a Category A petition. If the FBI disapproves the schedule, the petition will be reclassified as a Category C or D petition, and the petitioning carrier must file with the Commission the additional information described below within 45 days of the date of the FBI letter disapproving the proposed CALEA deployment schedule.
- c) **Category C:** Petitions from carriers that choose not to participate in the FBI's Flexible Deployment Program, but can provide evidence from their equipment manufacturers that the carriers cannot obtain and activate CALEA-compliant features by June 30, 2000. These Category C petitions must include: (1) proof in the form of a letter from each of its switching equipment manufacturers, identifying itself as the equipment manufacturer for the petitioning carrier, and asserting that the section 103 compliance solutions will not be tested and installed for that carrier by the June 30, 2000 compliance date; and (2) a statement from each manufacturer that identifies the installment dates that it has negotiated with the petitioning carrier, stating when compliance with section 103 will be accomplished, broken down by switch platform if the petitioning carrier's recommended compliance date differs by switch platform. Letters from manufacturers submitted by carriers must include the name, title, and

¹³ This information may be provided to the Commission with the same template used by the FBI's Flexible Deployment Program. See *infra* para. 12 for a discussion of the need to protect sensitive information from routine public disclosure.

telephone number of the manufacturer's employee or officer who signed the letter, so that the Commission can verify the information contained therein. We also encourage Category C petitioners to include an explanation as to why they chose not to participate in the FBI's program.¹⁴

- d) **Category D:** Unlike petitions in Categories A, B or C, petitions in "catchall" Category D will lack some of the elements that the other category petitions contain in support of their section 107(c) showings (*e.g.*, participation in the FBI's Flexible Deployment Program, letters from manufacturers committing to installation dates). Accordingly, Category D petitions must provide alternative information sufficient for the Commission to find that section 103 compliance is not reasonably achievable through application of technology within the compliance period. At a minimum, a petitioner's showing must identify the manufacturers of the carrier's equipment; provide the names, addresses and telephone numbers of the manufacturers' representatives; provide, if available, the date when CALEA-compliant equipment will be tested and installed; and include a brief explanation as to why the information contained in paragraph 8(c) above is not available at this time. We also encourage Category D petitioners to include an explanation as to why the carrier chose not to participate in the FBI's Flexible Deployment Program.

9. **Final Determination under CALEA Section 107(c).** The Commission intends to make every effort to reach a final determination on all petitions by March 31, 2001. If the Commission dismisses or denies a petition, the Commission will grant the carrier a temporary extension of 45 days from the date of the letter or order conveying the decision for the carrier to come into compliance with section 103, file a complete and accurate petition, or seek other remedies (as specified in the decision).

10. **Preliminary Determination under CALEA Section 107(c).** In view of the likelihood that, prior to June 30, 2000, the Commission will not be able to render a final determination on all timely filed petitions for extensions of the compliance deadline, the Commission may render a preliminary determination on extensions if certain petitioners satisfy the requirements of section 107(c), under either one of the following circumstances:

- a) **Category A or B petitions:** The petitioner has chosen to participate in the FBI's Flexible Deployment Program, and has filed a fully completed extension petition with the Commission by May 31, 2000, along with a copy of the letter from the FBI acknowledging receipt of its proposed deployment schedule or approving its schedule;
OR
- b) **Category C petitions:** The petitioner does not seek to participate in the FBI's Flexible Deployment Program, but has obtained agreement from its equipment manufacturers to supply equipment permitting the petitioner to come into CALEA compliance by a date

¹⁴ Such explanations could provide information that could improve Commission coordination with the Flexible Deployment Program.

certain. A fully completed extension petition must be filed with the Commission by May 31, 2000, along with letters from the equipment manufacturers setting forth information evidencing such agreement, as specified in paragraph 8(c) of these General Instructions.

Petitioners who supply the above-described materials will be deemed to have provided sufficient information to permit the Commission to make a preliminary and expeditious determination that compliance with the current deadline is not reasonably achievable through application of technology available within the compliance period. Accordingly, such petitioners may receive up to a nine-month extension of time to comply with section 103 – until March 31, 2001 – or until superseded by a final determination, if they file and substantiate their requests, as described above, by May 31, 2000. In the event a category B petitioner receives notice from the FBI rejecting or modifying its proposed CALEA deployment schedule after the June 30, 2000 deadline, the Commission will end petitioner's preliminary determination extension 45 days from the date of the FBI's notice. If the petitioner files with the Commission an amended petition that satisfies the requirements of paragraphs 8(c) or 8(d) above before the 45-day extension expires, the preliminary determination extension may be restored.

11. Category D petitioners may also receive a preliminary determination under CALEA section 107(c), resulting in similar extensions of time, under similar conditions. The grant of such determination, however, cannot be presumed by the filing of a petition. Rather, the carrier must include with its petition, under separate heading, a request and justification for a preliminary determination. The Commission will decide whether to extend preliminary determination extension treatment on a case-by-case basis, and will notify such petitioners of its decision as soon as possible. To ensure consideration of a request for such a preliminary determination prior to June 30, 2000, the fully completed petition (including the alternative information) must be filed with the Commission by May 31, 2000.

12. **Confidential Treatment of CALEA Capability Compliance Information.** Pursuant to section 0.457(g) of the Commission's rules, the detailed information provided by petitioning carriers to enable the Commission to find that section 103 compliance by the deadline is not reasonably achievable, will not be made routinely available for public inspection.¹⁵ Information not available for public inspection includes that which correlates switch locations, types, software and expected CALEA compliance dates. Petitioning carriers need not expressly request confidential treatment in order that the information submitted with their petitions be withheld from public disclosure.¹⁶ However, they must segregate the confidential information in an attachment(s) to the petition, and mark those attachments, "Confidential – Not for Public Inspection."

¹⁵ 47 C.F.R. § 0.457(g). Note, however, that the Commission will entertain requests under section 0.461 of its rules for permission to inspect these records, but would grant such request only in the event the requester is able to meet the requirements of section 0.461. 47 C.F.R. § 0.461. See generally, *Treatment of Confidential Information Submitted to the Commission, Report and Order*, 13 FCC Rcd 24816 (1998).

¹⁶ 47 C.F.R. § 0.459(a).

II. Petition Drafting Instructions

13. Line-by-Line Instructions for Drafting Extension Petitions (please refer to Appendix A of this Public Notice):

- a) Carrier, affiliate, and location information. The heading of the petition should clearly state the carrier's name and Telephone Relay Service (TRS) identification code; identify the filing as a CALEA extension petition; and indicate whether the facilities covered by the petition are wireline (Common Carrier Bureau or CCB), terrestrial wireless (Wireless Telecommunications Bureau or WTB), cable (Cable Services Bureau or CSB), or satellite (International Bureau or IB) (*see infra* para. 15).
 - 1) Carriers that are parent, holding or affiliate companies of other carriers may include the TRS numbers of all of their affiliates on the same petition. If, however, the affiliates are regulated by more than one FCC Bureau, we would encourage separate petitions. For example, if a local exchange carrier (LEC) has a Commercial Mobile Radio Service (CMRS) carrier affiliate using terrestrial wireless facilities, it may file a separate petition for the LEC with the Common Carrier Bureau, and a separate petition for the CMRS carrier with the Wireless Telecommunications Bureau. If the affiliate does not have its own TRS number, the TRS number of the parent, holding or affiliated carrier may be used.
 - 2) Carriers with affiliates and subsidiaries that rely on one or more carriers for switching services, such as host switching services, should be listed on the same petition with the carriers that provide to them the switching services. For example, carrier "X" possesses the host switching platform for carriers "Y" and "Z," who serve their customers with services from switching facilities that are engineered to be remote switching facilities off of carrier "X's" host switching platform. Since the remote switches used by carriers "Y" and "Z" utilize the stored program control features of carrier X to send and receive traffic on behalf of their subscribers, the CALEA solution for carriers "Y" and "Z" are reliant upon CALEA compliance by carrier "X." Thus, carriers "Y" and "Z" must file their petitions along with the petition from carrier "X," because compliance by carrier "X" equals compliance by carriers "Y" and "Z."
 - 3) Carriers may obtain their TRS codes from the FCC's *Carrier Locator*, January 2000, edition, by downloading the appropriate files (LOCAT-99.ZIP and LOCAT-99.PDF) from the FCC-State Link internet site at <http://www.fcc.gov/ccb/stats>. Carriers may also purchase a hard copy by calling the International Transcription Service, Inc., at (202) 857-3800.
- b) All petitions must list the equipment, facilities and services that are the subject of the extension petition. The switch-specific information should be placed in an attachment to the petition, and referenced in the petition's text (*e.g.*, "See Attachment A for a list of switching platforms and their locations for which an extension is requested.") The

attachment must be marked at the top of each page: "Confidential – Not For Public Disclosure" pursuant to the instructions in paragraph 12, above.

- c) All petitions must specify the length of extension requested. If the desired extensions vary by carriers, subsidiary, affiliate or switch platform, place the requested extensions in an attachment to the petition, and reference the attachment (*e.g.*, "Petitioner requests various extensions explained in Attachment A to this petition."). Carriers should include enough time to purchase, test, and install hardware and software required for CALEA compliance. Under section 107(c)(3) of CALEA, the Commission cannot grant extensions longer than two years. Should a Flexible Deployment schedule involve periods longer than two years, the carrier should take note of the end of the extension period and seek a further extension at that time; CALEA sections 107(b)(5) and 109(b) provide carriers with additional options.
- d) All petitions must explain why the carrier could not obtain equipment and software in sufficient time to be CALEA-compliant by June 30, 2000 (see paragraph 8, above).
- e) For Category A, B and C petitions, include a copy of the FBI's letter accepting the carrier's deployment schedule, or a copy of the FBI's letter confirming the carrier's participation with the FBI's Flexible Deployment Program, or the letters from equipment manufacturers, as described in paragraph 8 above. The letters should be marked at the top: "Confidential – Not For Public Disclosure."
- f) The final paragraph must contain contact information: name, telephone number, FAX number, address, and e-mail address of the employee or officer authorized to negotiate CALEA-related matters with the Commission.

III. Filing Instructions

14. **Consolidation of Petitions.** We encourage joint filings by similarly situated carriers, and single filings by parent and holding companies that include their subsidiary and affiliate carriers, to minimize the number of petitions filed. Similarly, we believe that filings by trade associations or other industry groups may be particularly helpful in consolidating information, lessening the burden on carriers, and facilitating prompt resolution by the Commission. We would encourage industry groups to list carriers using similar equipment, rather than having each carrier file separate petitions. However, in responding to these consolidated petitions, the Commission reserves the right to act on the petitions in whole or in part and may request additional information from individual carriers if the need arises.

15. Section 107(c) petitions will generally be processed by staff of the operating Bureaus that oversee the type of facilities involved. Thus, while we urge carriers to consolidate their filings to the greatest extent possible, we also encourage those that have wireline, wireless, cable and satellite operations to file separate petitions covering their operations in each of these four categories, to facilitate processing by the respective responsible Bureaus (*see supra* para. 13a).

16. **Time for Filing.** There is no deadline for filing section 107(c) petitions, but petitions filed after May 31, 2000 will not qualify for preliminary determination extensions. Category A and B petitioners are encouraged to file CALEA section 107(c) petitions with the Commission as soon as they receive the FBI letter accepting the petitioning carrier's deployment schedule.

17. Since manufacturers are still developing CALEA compliance solutions for the six additional punch list items (*see supra* note 3), we will not consider at this point petitions for extension of the September 30, 2001, deadline for compliance with the punch list items.

18. **Method of Filing.** Petitioning carriers should file an original and five (5) copies with the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554. Petitioners should also file a 3½" diskette containing an electronic copy of the petition and its attachments with the Commission (Microsoft Word version 6.0 or later, or Adobe PDF format), along with the paper copies.

- a) The Secretary will deposit one of the paper copies in a drop box established for the FBI. The FBI will dispatch a courier to pick up the petition copies from the drop box.
- b) Petitioning carriers may not file their petitions with the Commission electronically. The Commission is currently not equipped with encryption capability to ensure the confidential treatment of information as it is transmitted to the FCC.¹⁷

19. **Public Notice.** Upon receipt of a petition, the Commission will issue a public notice announcing the filing and specifying a date by which comments regarding the petition may be submitted. All comments should be served on the carrier, and an extra copy filed with the Commission for the FBI. As noted in paragraph 12 above, the information provided by petitioners to substantiate their requests will not be made routinely available for public inspection, and petitioners do not need to request confidential treatment separately. Parties seeking access to such information must request such access pursuant to 47 C.F.R. § 0.461 of the Commission's rules.

20. **Ex Parte Treatment.** Petitions filed pursuant to CALEA section 107(c) are classified as "permit but disclose" proceedings for purposes of the Commission's ex parte rules. *See generally* 47 C.F.R. §§ 1.1200-1.1216. As a "permit but disclose" proceeding, ex parte presentations will be governed by the procedures set forth in section 1.1206 of the Commission's rules applicable to non-restricted proceedings, 47 C.F.R. § 1.1206. Parties making oral ex parte presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 C.F.R. § 1.1206(b)(2). Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.

¹⁷ Electronic Filing of Documents in Rulemaking Proceedings, *Order*, 13 FCC Rcd 11,322 (1998).

21. **Further information.** For further information concerning petitions under section 107(c) of CALEA, contact David Ward (Common Carrier Bureau), 202-418-2336, <doward@fcc.gov>; James Heimbach (Cable Services Bureau), 202-418-0055 <jheimbac@fcc.gov>; Karl Kensinger (International Bureau), 202-418-0773 <kkensing@fcc.gov>; or John Spencer (Wireless Telecommunications Bureau), 202-418-1310 <jspencer@fcc.gov>.

Action by the Commission on April 21, 2000. Commissioner Furchtgott-Roth concurring and issuing a statement. Commissioner Ness issuing a statement.

- FCC -

Appendix A: Sample CALEA Section 107(c) Petition

**Before the
Federal Communications Commission
Washington, D.C.**

In the Matter of:)
)
The Communications Assistance) (Name of Petitioner, or Parent)
For Law Enforcement Act (CALEA),) (Names of Petitioner Subsidiaries)
Section 107(c) Extension of Capability) (TRS Number(s) of Petitioner)
Requirements) (*Choose one:* CCB, CSB, IB, WTB)

**PETITION FOR EXTENSION
[TEMPLATE]**

1. (Name of Petitioner-Parent, and each subsidiary or affiliate that the Petitioner-Parent represents) (or in the case of joint or consolidated petitions, the names of the carriers), hereinafter "Petitioner," hereby requests an extension of CALEA section 103 capability requirements, 47 U.S.C. § 1002, pursuant to CALEA section 107(c), 47 U.S.C. § 1006(c).

2. Explanation as to why the carrier could not obtain equipment and software in sufficient time to be operational by June 30, 2000.

3. Petitioner requests an extension for the equipment, facilities and services listed in Attachment A, as stated therein.

4. Petitioner attaches the following information to support its petition for an extension under CALEA section 107(c):

- a. For Category A petitions, petitioner must attach the letter from the FBI's Flexible Deployment Program that contains the FBI's recommendation regarding the extension's length, and the new compliance date.
- b. For Category B petitions, petitioner must attach the letter from the FBI's Flexible Deployment Program that contains a confirmation from the FBI that the petitioning carrier filed information with the FBI's Flexible Deployment Program.
- c. For Category C petitions, petitioner must attach the letters from all of its manufacturers, and provide the information described in paragraph 8(c) (General Instructions).

- d. For Category D petitions, petitioner must attach information described in paragraph 8(d) (General Instructions).

5. The final paragraph must contain contact information: name, telephone number, FAX number, address, and e-mail address of the employee or officer authorized to discuss CALEA-related matters with the Commission.

6. The petition must be signed by an officer or employee designated by the carrier to be responsible for its content. If the petition is filed on behalf of multiple carriers, it may be signed by an agent of those carriers, such as a trade association representative, who is authorized by each carrier listed on the petition to verify the accuracy of the information provided.

7. Attachments or appendices containing confidential information as described in paragraph 12 (General Instructions) must be marked at the top of each page: "Confidential – Not For Public Disclosure."

CONCURRING STATEMENT OF COMMISSIONER HAROLD FURCHTGOTT-ROTH

Re: CALEA Section 103 Compliance and Section 107(c) Petitions, CC Docket No. 97-213 (rel. April 25, 2000)

I concur in the Commission's decision to facilitate extensions of time for deployment of CALEA compliant equipment. However, I would have gone further by granting a blanket extension of time to permit carrier compliance.

There is no question that rapid deployment of CALEA-compliant equipment is required under the statute and important to the law enforcement community. Nonetheless, the concerns I raised two years ago remain today, the FCC has great difficulty predicting with any precision when compliance with these obligations will become possible.¹ Similarly, just as two years ago, advocates of the individual waiver approach argue it is necessary to put carriers "feet to the fire" and "send a signal." I remain skeptical of sending signals, particularly those that have little, if any, impact. In many cases, CALEA compliance is simply beyond the control of carriers. Carriers cannot control when manufacturers produce this equipment; nor do they have complete control over manufacturers' installment schedules. The statute seems to recognize this inherent limitation; the Commission is permitted to grant extensions if "compliance. . . is not reasonably achievable through application of technology available within the compliance period."² That statutory standard seems to be satisfied in this case.

Rather than requiring thousands of individualized showings about deployment dates and equipment availability, I believe the far more prudent approach would have been to grant a blanket extension of time. The delays in deployment are not the result of individual carriers' situations. If they were, individual petitions may have been the preferred approach. Here, the problems are industry-wide and manufacturer-specific. Thus, in my view, the solution should be industry-wide and/or manufacturer-specific. Instead, we have adopted an individualized approach to a group problem. Unfortunately, the individualized approach will also require showings by thousands of individual carriers and FCC assessments of thousands of individual petitions. In my view, this imposes an unnecessary burden on carriers, particularly small and rural providers. Despite the efforts in the Notice, these determinations will consume significant carrier resources to develop CALEA-compliant equipment deployment schedules that will inherently be fraught with imprecision. As for the Commission, we too will expend significant resources that could be better deployed on a host of other activities. In the end, I believe carriers, law enforcement, the Commission, and the public would be better

¹ See Separate Statement of Commissioner Harold Furchtgott-Roth, *In the Matter of Petition for the Extension of the Compliance Date Under Section 107 of the Communications Assistance for Law Enforcement Act*, 13 FCC Rcd 17990 (rel Sept 11, 1998)

² 47 U.S.C. § 107 (c) (2).

**Separate Statement of
Commissioner Susan Ness**

Re: CALEA Section 103 Compliance and Section 107(c) Petitions (CC Docket No. 97-213)

Preserving law enforcement agencies' surveillance capabilities in the digital technology era is a critical goal of the Communications Assistance for Law Enforcement Act (CALEA). Each day that goes by without CALEA-compliant equipment in operation limits the capability of law enforcement to protect public safety and to prevent terrorist or unlawful activity. At the same time, we must recognize that CALEA-compliant equipment has not been developed as quickly as we had expected. As a result, for the majority of carriers, and in particular, smaller carriers, CALEA-compliant hardware and software will not be commercially available by June 30, the deadline for compliance with the CALEA requirements.

I would have preferred to adopt an even more streamlined waiver process or a blanket extension for carriers who, despite their best efforts, are unable to obtain CALEA-compliant equipment. Nonetheless, I support the steps we have taken in this Public Notice to reduce the burden on carriers and provide a reasonably quick and efficient waiver mechanism for extensions of the deadline. Carriers using similar equipment, or associations of these carriers, are permitted to seek a joint waiver. I also urge the Commission to apply any waiver request equally to similarly-situated carriers. Finally, I strongly encourage manufacturers and carriers to work cooperatively with law enforcement agencies to develop, install, and test CALEA-compliant equipment as expeditiously as possible.

served by a blanket extension. Fewer resources spent on thousands of redundant paper filings mean more resources spent on obtaining compliance.³

³ This is particularly true in light of the rapid evolution of communications infrastructure. In a world in which increasing volumes of communications are packetized, it is not clear that our policy approach is the best one for all concerned.